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| 9 | The Pinal Creek Group, et al., |) | No. CV-91-1764-PHX-DAE (LOA) |
| 0 | Plaintiffs, |) | ORDER |
| 1 | vs. |) | |
| 2 | Newmont Mining Corp., et al., |) | |
| 3 | Defendants. |) | |
| 4 | |) | |

ANALYSIS

This matter is being tried in several phases. The pending motions *in limine* pertain to witnesses, opinions, exhibits and other evidence that may be offered in evidence during Phase II which will be tried to the Hon. David A. Ezra, not a jury. A motion *in limine* is "[a] pretrial

1 request that certain inadmissible evidence not be referred to or offered at trial." Black's Law
2 Dictionary, 1038 (8th Ed. 2004). Motions *in limine* are useful because they allow for the pre-
3 trial resolution of evidentiary disputes without having to present potentially prejudicial evidence
4 in front of a jury. Brodit v. Cambra, 350 F.3d 985, 1004 (9th Cir. 2003) (Berzon, J.,
5 dissenting)(citations omitted). Motions *in limine* "avoid the obviously futile attempt to 'unring
6 the bell'" once the evidence has been presented before the jury. Id. at 1005 (quoting Kelly v.
7 New W. Fed. Savs., 49 Cal.App.4th 659, 56 Cal.Rptr.2d 803, 808 (1996)). Federal Rule of
8 Evidence 103 authorizes a district court to make "a definitive ruling on the record admitting or
9 excluding evidence, either at or before trial." Fed.R.Evid. 103. "Rule 103 does not require a
10 court to rule on a motion *in limine*." CFM Communications, LLC v. Mitts Telecasting
11 Company, 424 F.Supp.2d 1229, 1233 (9th Cir. 2005). When presented with a pretrial motion
12 *in limine*, the trial court is forced "to decide the merits of introducing a piece of evidence
13 without the benefit of the context of trial." Id. (citing United States v. Marino, 200 F.3d 6, 11
14 (1st Cir. 1999) (recognizing that proffered evidence can be more accurately assessed in the
15 context of other evidence.).

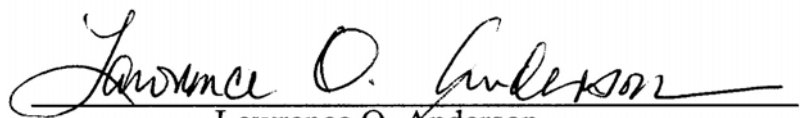
16 As previously stated, the Phase II issues will be tried to the bench. Thus, the
17 rationale underlying pretrial motions *in limine* — keeping potentially prejudicial information
18 from the jury does not apply. Judges are presumed to disregard inadmissible evidence and rely
19 on competent evidence. Plummer v. Western International Hotels Company, Inc., 656 F.2d 502,
20 505 (9th Cir. 1981)(citing E. Cleary, McCormick on Evidence § 60, at 137 (2d ed. 1972)). In
21 view of the complexity of the issues in this case, the trial judge is better able to assess the
22 admissibility of evidence and witnesses in the context of the bench trial upon appropriate and
23 timely objection at the time of trial rather than four months or so before trial. The Court,
24 therefore, will deny the pending motions *in limine* except one without prejudice at this time.
25 Proceeding in this fashion will benefit, rather than prejudice, the parties because after the filing
26 of the detailed Final Pretrial Order and hearing opening statements, the trial judge will have
27 more information and understanding regarding the evidentiary issues at trial and will be better
28 able to rule upon the admissibility of evidence and objections at that time.

1 Accordingly,

2 **IT IS HEREBY ORDERED** that the following Motions *in Limine* are **DENIED**
3 without prejudice: docket. #s 1777, 1785, 1786, 1788, 1790, 1791, 1792, 1793, 1794, 1795,
4 1797, 1798, 1799, 1800, 1801, 1802, 1803, 1804.

5 **IT IS FURTHER ORDERED** that the parties shall timely file Responses and
6 a Reply to Canadian Oxy's Motion For Access To All Court Records Regarding Norris and
7 Fetter etc. (docket # 1796), filed on June 23, 2006.

8 DATED this 26th day of June, 2006.

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11 Lawrence O. Anderson
12 United States Magistrate Judge
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